

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Raymond & Associates, LLC
Codan, Mobile County, Alabama

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****Proposed****
ADMINISTRATIVE
ORDER NO: 16-_____ AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. Raymond & Associates, LLC (hereinafter, “Raymond”) owns and operates ship building and repair company (hereinafter, the “Facility”) located in Codan, Mobile County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that “....open burning must take place on the property on which the combustible fuel originates.”

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that “Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash.”

6. ADEM Admin. Code r. 335-3-3-.01(2)(d) states that “Permission to open burn under the provision of this paragraph is revoked during the months of May, June, July, August, September, and October in Baldwin, DeKalb, Etowah, Jefferson, Lawrence, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, and Talladega Counties.

7. On July 25, 2016, the Department received a complaint that Raymond was conducting illegal open burning at the Facility.

8. On August 1, 2016, the Department followed up on the July 25, 2016 complaint by conducting an inspection of the Facility, in which the inspector observed two ongoing fires in locations differing from the one reported in the complaint. One fire, located near the North East corner of the portion of the Facility, west of Shell Belt Road, contained yard trimmings. The other fire, located near the entrance of the portion of the Facility east of Shell Belt Road, contained numerous empty paint cans and electrical wire in a metal container. The inspector also noted remnants of the original fire reported in the July 25, 2016, complaint, located near the waterfront portion of the Facility, which appeared to have contained yard trimmings and a paint can. Based on the inspection, Raymond was illegally open burning in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)4, and 335-3-3-.01(2)(d). The facility representative, Cole Elmore, (hereinafter, “Elmore”), was informed, by the inspector, of the Department’s burn ban and open burning regulations. Elmore instructed staff members to

douse the fire and stated that the contaminated soil would be properly disposed of. Elmore also stated that he would instruct his staff to discontinue burning as a means of disposal.

9. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Raymond conducted illegal open burning and did so during the burn ban. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Raymond to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)4, and 335-3-3-.01(2)(d).

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Raymond likely derived economic benefit by not legally disposing of debris and garbage.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Raymond to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Raymond has no previous history of violations for illegal open burning with the Department.

F. THE ABILITY TO PAY: Raymond has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* "Attachment A", which is hereby incorporated into these Findings.)

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Raymond shall pay to the Department a civil penalty in the amount of \$2,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Raymond shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)4, and 335-3-3-.01(2)(d).

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or

State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve Raymond of its obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Raymond for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Raymond for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2016.

Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

ATTACHMENT A

Raymond & Associates, LLC Codon, Mobile County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	2	\$1,000	\$500	\$0	
Burning during the burn ban	2	\$1,000	\$500	\$0	Total of Three Factors
TOTAL PER FACTOR		\$2,000	\$1,000	\$0	\$3,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$2,000
Total Adjustments (+/-) <i>Enter at Right</i>	-\$2,000

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$4,000
Total Adjustments (+/-)	-\$2,000
FINAL PENALTY	\$2,000.00

Footnotes

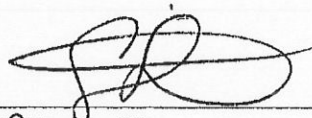
* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.

CERTIFICATE OF SERVICE

I, DIANNE PALMORE, do hereby certify that I have served this Proposed Administrative Order upon the person(s) listed below.

Raymond & Associates, LLC
14562 Shell Belt Road
Codon, Alabama 36523

DONE this the 7th day of OCTOBER, 2016.

A handwritten signature in black ink, appearing to read 'DP', is written over a horizontal line.

DIANNE PALMORE
Alabama Department of
Environmental Management